

STATE OF MICHIGAN
COURT OF APPEALS

84 LUMBER COMPANY, L.P.,

Plaintiff,

v

PAGEL & FREY, L.L.C., and BRADFORD
FREY,

Defendants/Third-Party Plaintiffs-
Appellees,

and

LIGHTHOUSE PLACE DEVELOPMENT, L.L.C.,

Third-Party Defendant/Third-Party
Plaintiff-Appellant,

and

JAMES P. GIERCZYK, BRUCE LESHINSKI,
PATRICIA LESHINSKI, JERRY TUFANO,
SUSAN MECHE, JACK A. SHAW, MARTHA S.
SHAW, MARK A. SHAW, LISA K. SHAW,
JOSEPH GRADOWSKI, DONNA GRADOWSKI,
and PEACHTREE COMPANIES, INC., d/b/a
PEACHTREE DOORS AND WINDOWS,

Third-Party Defendants.

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Third-party defendant Lighthouse Place Development appeals by leave granted the trial court's order denying its motion for summary disposition with respect to third-party plaintiff Pagel & Frey's complaint to enforce a construction lien. Because we conclude that MCL 339.2412 precludes an unlicensed residential contractor from enforcing a construction lien, we reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Lighthouse hired Pagel & Frey as the construction manager of a project to build a condominium complex. Lighthouse later terminated its contract with Pagel & Frey. After plaintiff sued Pagel & Frey, Pagel & Frey filed a third-party complaint seeking payment of over \$360,000 from Lighthouse. It also sought to foreclose a construction lien filed against the property under the Construction Lien Act (CLA), MCL 570.1101 *et seq.* Lighthouse argued that because Pagel & Frey was required to be licensed as a residential builder and was unlicensed, it could neither sue to collect payment nor enforce its construction lien. The trial court agreed that Pagel & Frey could not maintain its breach of contract action and dismissed that aspect of the third-party complaint, but ruled that the construction lien was nonetheless enforceable because Pagel & Frey was not required to be licensed under § 114 of the CLA, MCL 570.1114. Lighthouse now challenges the court's latter ruling.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law that is also reviewed de novo on appeal. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

As a general rule, a person must be licensed to engage in any occupation regulated under the occupational code. MCL 339.601(1). Residential builders are regulated under article 24 of the code, MCL 339.2401 *et seq.* A residential builder is a person engaged in the construction of a residential structure or combination residential and commercial structure who, for compensation other than wages for personal labor only, undertakes with another for "the erection, construction, replacement, repair, . . ." of the structure. MCL 339.2401(a). A residential structure is "a premises used or intended to be used for a residence purpose and related facilities appurtenant to the premises, used or intended to be used, as an adjunct of residential occupancy." MCL 339.2401(c). Section 2412, which is pertinent to this case, provides:

A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract. [MCL 339.2412(1).]

There is no dispute that "a builder may not bring an action for collection of compensation unless it can prove that it possesses the license 'required by this article.'" *Stokes v Millen Roofing Co*, 466 Mich 660, 664; 649 NW2d 371 (2002).

The CLA generally grants every contractor who provides an improvement to real property a construction lien against the interest of the owner who contracted for the improvement. MCL 570.1107(1). However, a contractor's right to a lien on a "residential structure" is limited. Where a residential structure is involved, the contractor is not entitled to a lien against the owner's interest unless the contract is in writing and, if the contractor is required to be licensed under article 24 of the occupational code, the contract indicates that he is licensed and states his license number. MCL 570.1114. Under the CLA, a "residential structure" is defined as "an individual residential condominium unit or a residential building containing not more than 2 residential units, the land on which it is or will be located, and all appurtenances, in

which the owner or lessee contracting for the improvement is residing or will reside upon completion of the improvement.” MCL 570.1106(4).

Where the structure at issue constitutes a residential structure as defined by the CLA, the contractor’s construction lien is invalid if the contract does not comply with the requirements of MCL 570.1114. *Stokes, supra* at 667-668.

There is no dispute that the construction project at issue here involved a “residential structure” as defined by § 2401(c) of the occupational code but not as defined by § 106(4) of the CLA. Therefore, while Pagel & Frey was required to be licensed under the occupational code, it was not required to comply with § 114 of the CLA in order to claim a lien because it did not seek a lien against the interest of an owner in a residential structure as that term is defined by the CLA. Nevertheless, while § 114 of the CLA may not bar Pagel & Frey from asserting a right to a construction lien, § 2412 of the occupational code prevents it from enforcing the lien because it is unlicensed.

As noted, § 2412, prohibits an unlicensed residential contractor from bringing or maintaining an action “for the collection of compensation for the performance of an act or contract for which a license is required” The *Stokes* Court defined the term “compensation” as “payment” or “something given or received as an equivalent for services, debt, [or a] loss.” *Stokes, supra* 665-666. Enforcement of a construction lien involves the sale of all or part of the property and distributing the sale proceeds to the lien claimants. See MCL 570.1121(1) and (4); MCL 570.1124(1). Thus, enforcement of the construction lien would result in Pagel & Frey receiving compensation for work for which a license was required. That is exactly what § 2412 prohibits, because Pagel & Frey was not licensed. Therefore, while § 114 of the CLA did not preclude Pagel & Frey from claiming a lien, § 2412 of the occupational code does prevent it from enforcing the lien. Therefore, the trial court erred in denying Lighthouse’s motion for summary disposition with respect to Pagel & Frey’s lien foreclosure claim.

Reversed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood